No. 80-1288

Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO ["IAM"], & IAM DISTRICT LODGE NO. 100,

Petitioners,

—against—

IBERIA AIR LINES OF SPAIN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the catastrophic snow conditions in Washington, D.C. on February 20 and 21, 1979 were sufficient reason to toll the ten day statutory period for invoking the services of the National Mediation Board under Section 6 of the Railway Labor Act, 45 U.S.C. &156.

2. Whether Section 6 of the Railway Labor Act, requires written application to request the services of the National Mediation Board.

3. Whether the National Mediation Board, as a government agency, can relax its own rules and regulations to carry out the purposes for which Congress established the National Mediation Board.

4. Whether the Internation Association of Machinists requested the services of the National Mediation Board within the purview of Section 6 of the Railway Labor Act on February 22, 1979 so as to activate the status quo requirements of Section 6.

5. Whether the purpose and scheme of the Railway Labor Act will be frustrated by allowing Iberia Air Lines to take advantage of a natural catastrophe to change working conditions of its International Association of Machinists represented employees when Iberia had actual knowledge the International Association of Machinists was requesting National Mediation Board services.

Parties in Lower Court involved in Appeal: IBERIA AIR LINES OF SPAIN, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, and IAM DISTRICT LODGE NO. 100.

Parties in Lower Courts which have not Appealed: NATIONAL MEDIATION BOARD, UNITED STATES OF AMERICA

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. .....

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM") and IAM DISTRICT LODGE NO. 100,

Petitioners,

-against-

IBERIA AIR LINES OF SPAIN,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a) is not officially reported. The decision of the District Court for the Southern District (Ward, J.) is reported at 472 F. Supp. 104 (App. 2a-16a).

JURISDICTION

The judgment of the Court of Appeals (App. 12) was entered on September 23, 1980. The jurisdiction of this Court is invoked under 28 USC & 1254(1) and in accordance with Supreme Court Rule 19.

STATUTES & RULES INVOLVED

1. The Railway Labor Act, 45 U.S.C. &156 as follows:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proferred its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

2. National Mediation Board Rules and Regulations, 29 C.F.R. &1203.1 as follows:

"Applications for the mediation services of the National Mediation Board under section 5, First, of the Railway Labor Act, may be made on printed forms N.M.B. 2, copies of which may be secured from the Board's Secretary. Such applications and all correspondence connected therewith should be submitted in

duplicate. The application should show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization date of agreement between the parties, if any, date and copy of notice served by the invoking party to the other and date of final conferenc between the parties. Application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act, or by the chief executive of the labor organization, whichever party files the application. These applications, after preliminary investigation in the Board's officer (sic), are given docket number in series "A" and the cases are assigned for medication to Board members or to mediators on the Board's staff."

STATEMENT OF CASE

This is an appeal from the judgment of the Second Circuit Court of Appeals which affirmed without opinion the judgment of Judge Mary Johnson Lowe based on the opinion of Judge Robert J. Ward of the Southern District Court of New York, which granted a declaratory judgment holding that Iberia had lawfully changed the rates of pay, rules and working conditions of its employees represented

by the International Association of Machinists (hereinafter "IAM"), that the IAM's request for mediation by the National Mediation Board (hereinafter NMB) was ineffective because it was requested beyond the ten day period provided in the Railway Labor Act (hereinafter RLA) Section 6, 45 U.S.C. &156 and dismissed the complaint of the United States of America which sought an injunction to return the rates of pay, rules and working conditions to those previously in existence and to declare the changes by Iberia in violation of the RLA. The United States of America brought the action against Iberia and on the same day Iberia brought a separate action against the NMB, IAM and District 100 to declare the changes it has instituted as lawful, and the invocation of NMB services ineffective due to the

time of such request being more than the ten day statutory period of Section 6, RLA. Both actions were consolidated on consent. The District Court found that the filing of the request by the IAM took place on the 13th day after the deadlock between Iberia and the IAM, that there should not be any tolling of the 10 day statutory period and that Iberia had lawfully instituted the changes in working conditions. The IAM, District 100, National Mediation Board and the United States of America filed appeals; however, the National Mediation Board and the United States of America subsequently withdrew the appeals.

FACTUAL BACKGROUND

The IAM represents approximately 260 employees of Iberia as their designated representative pursuant to the provisions of the RLA. Iberia and the IAM entered

into a labor contract, effective January 1, 1976, covering the employees. The contract, by its terms, continued in full force and effect until December 31, 1978, and thereafter unless written notice of intended change was served by either party in accordance with Section 6 of the RLA. On or about September 29, 1978, Iberia and the IAM exchanged their respective notices of intended changes. Representatives of both Iberia and the IAM met in conference sessions on at least eleven occasions from November 6, 1978 through February 10, 1979 to negotiate concerning the parties' respective proposals for change in the contract.

The parties had met on Friday, February 9th, 1979 until 1:00 a.m. and on Saturday, February 10th resumed negotiations at 12:15 p.m. On

February 10, 1979, Rafael Cuenca, Iberia's Vice President of Industrial Relations, informed Art Schafer, District 100 General Chairman who was representing the IAM, that Iberia was deadlocking the negotiations. Schafer told Cuenca that he was going to request meidation from the NMB on behalf of the IAM. On February 13, 1979, Schafer wrote a bulletin to the IAM employees at Iberia stating he had applied for a Federal Mediator.

Copies of the bulletin were posted on 3 bulletin boards at Iberia offices where Iberia's Mr. Cuenca became further informed of Mr. Schafer's request for mediation.

Schafer wrote a letter on Monday,. February 12, to William L. Scheri, Assistant Airline Coordinator for the IAM in the IAM Headquarters in

Washington, D.C. requesting the IAM apply for mediation. This procedure of having requests for mediation filed by the IAM in Washington, D.C. is a policy of the IAM and in accordance with the policy behind 29 C.F.R. Section 1203.1 of the NMB's Rules and Regulations. The letter arrived at the IAM mailroom on Friday, February 16, 1979 and in Mr. Scheri's office on Thursday, February 22.

The NMB offices were closed on Saturday and Sunday, February 17th and 18th and also on Monday, February 19th due to Washington's birthday, a Federal holiday. Due to a catastrophic snowstorm in Washington, D.C. on February 19, the NMB offices and all non-emergency Federal Agencies were closed on February 20, 1979. The snowstorm was the worst in over 50 years in the Washington area

with accumulation of two feet of snow and snow drifts running up to four feet in the District and up to seven feet in the suburbs making roadways impassable. The IAM closed its Headquarters until February 22 due to the inability of personnel to get to work.

Mr. Scheri, who is responsible for filing IAM applications for the mediation services of the NMB, lives in Silver Springs, Maryland, a suburb of Washington. It was impossible for him to reach his office due to road conditions on February 20 and 21. On February 22, the first day the IAM building was open, Mr. Scheri called Mr. Rowland K. Quinn, Executive Secretary to the NMB, and invoked the mediatory services of the NMB by telephone with respect to Iberia Air Lines. Mr. Scheri informed Mr. Schafer on February 22 that the IAM had

filed for mediation. Mr. Scheri on February 22 also sent a letter with NMB - 2 form to the NMB by mail to confirm the application in writing to the NMB, which arrived the following day, February 23 at 11:08 a.m.

A few hours after, Murray Gartner, attorney for Iberia, informed Rowland Quinn that Iberia was changing the working conditions of its employees. On February 23, Mr. Quinn informed Mr. Gartner at 3:00 p.m. that the written IAM application had arrived at the NMB offices at 11:08 a.m. and had been docketed as NMB Case No. A-10395. The same day Mr. Quinn sent a letter to Iberia stating the same and reminding Iberia of the status quo provisions of the RLA. Murray Gartner sent a telex to Mr. Quinn on February 27 stating

the NMB had no jurisdiction due to the filing of the IAM request after the ten day statutory period. Iberia instituted changes in the pay, rules and working conditions of its employees on February 23 at about 11:00 a.m., approximately the same time the NMB received the written application from the IAM. Iberia has refused to return to the status quo conditions existing prior to the February 23, 1-79 changes and refused to meet with the NMB mediator assigned to the case as requested by the NMB.

REASONS THE WRIT SHOULD BE GRANTED

1. THE EMERGENCY CONDITIONS IN WASHINGTON, D.C. ON FEBRUARY 20th and 21st, 1979 THAT PREVENTED THE IAM FROM REQUESTING NATIONAL MEDIATION BOARD SERVICES UNDER SECTION 6, RAILWAY LABOR ACT, 45 U.S.C. &156, WITHIN THE TEN DAY STATUTORY PERIOD WARRANTED THE TOLLING OF THE FEDERAL STATUTORY PERIOD.

The District Court gave only cursory 12

consideration in its opinion to the worst snow storm in Washington, D.C. in over 50 years. The Court's only comment on this catastrophic event was that the NMB opened its office on February 21, 1979, and thereby dismissed the relevance of this natural disaster to the delayed request for NMB services. The Court totally disregarded an event which brought the United States government to a standstill in Washington, D.C. and crippled the nation's capitol.

The Washington Post's front page of February 20, 1979 states that the snow accumulation in Washington, D.C. was 23.6 inches with snowdrifts of up to four feet in the District and up to seven feet in the suburbs and virtually imprisoned the city. People couldn't get out of their driveways, doctors couldn't get to hospitals and there

were no telephone operators. Schools were closed and the United States Office of Personnel Management closed non-emergency agencies. The conditions of February 21 did not clear up over night. The Washington Post front page referred to the liberal leave policy for employees not reporting to work andquoted a National Weather Service forecaster who said, "I wouldn't expect any miraculous results for several days. There's too much snow." Although main highways were clear, secondary roads and neighborhood streets remained impassable.

The IAM, which closed its Headquarters on both February 20 and 21, acted quite responsibly in doing so. The affidavit of George J. Poulin, Resident Vice President of the IAM, stated that due to the weather conditions he closed the IAM building because

it was impossible for employees to come to work. William Scheri, the IAM official responsible for filing NMB requests for mediation, was snowed in and could not go to work. On arriving at his office the next day, Mr. Scheri acted responsibly upon reviewing the request for mediation sent from New York by Art Schafer when he telephoned the NMB Executive Director Rowland K. Quinn to inform him the IAM wanted mediation on Iberia. The IAM acted timely in informing the NMB of its request for mediation as soon as it was possible under the existing circumstances.

The NMB offices had been closed for the last four days out of the ten day period in Section 6, RLA for requesting mediation. The unique set of facts which included a weekend followed by a federal holiday and then the snow storm

certainly warrant a tolling of the 10 day period. The IAM had not delayed during the 10 day period as can be seen from the responsible conduct of its officials. IAM General Chairman, Art Schafer, negotiated with Iberia in New York until 1:00 a.m. on Friday, February 9 and resumed negotiations at 12:15 p.m. on Saturday, February 10. On Monday, February 12, he sent by United States mail the paperwork to request NMB services under Section 6, RLA, to the Washington office of the IAM where it arrived on Friday, February 16. There was nothing dilatory in the IAM's action prior to the unique events which then took place. The following four days the NMB's office was closed. It was only due to the snow emergency that the request for mediation was delayed. In addition to telephoning the NMB on February 22, the IAM also sent the usual

NMB 2 form to the NMB. Under the circumstances the IAM acted in a proper manner but due to conditions beyond IAM control the request was delayed. Certainly these are facts which warrant the tolling of the ten day Section 6 period. In Gloyd v. Midwest Refining Co., 62 F2d 483 (10th Cir. 1933), the Court of Appeals tolled the time period when a check was lost in the United States mail as the circumstances were beyond the control of the party who sent the check. In Monikon v. Wakelin, 6 Ariz. 225, 56 P. 735 (1899) a time period was tolled when the party was incapacitated. In the instant case both the above factors are present since the snow conditions were beyond the control of the IAM and its officials were incapacitated due to the circumstances. The ten day period of Section 6 RLA, to request NMB services should have been

tolled until February 22, 1979, at which point the IAM did request the NMB services pursuant to Section 6.

2. THE IAM REQUESTED NMB SERVICES WITHIN THE MEANING OF SECTION 6, RLA, BY TELEPHONE ON FEBRUARY 22, 1979, THE DAY TO WHICH THE TEN DAY PERIOD SHOULD HAVE BEEN TOLLED

The District Court held that even if the ten day period in Section 6, RLA, was tolled until February 22, the telephone conversation by a subordinate union official (William Scheri) did not constitute invocation of NMB services because Section 1203.1 of the NMB's Rules and Regulations specifies a written filing on Form NMB -2 by the chief executive of the union. The Court did not correctly understand the wording of Section 6, RLA which only specifies that there be a "request" of NMB services by either the union or air carrier. The word "request" did not

mean written request otherwise Congress sould have specified "written" as it did within the same Section 6 wherein it is stated:

> Carriers and representatives of the employees shall give at least thirty days written notice of an intended change in agreements.....

Since Congress did not require written request for the invocation of NMB services as it did regarding intended notice of changes in agreements then an oral request would comply with the statutory request provision.

The District Court did not properly assess the fact that Section 1203.1 of the NMB's Rules and Regulations is a NMB administrative rule which goes beyond the Section 6 requirement for invoking NMB services. The Court did not take cognizance of the right of the NMB to relax or modify its procedural rules on

the filing of requests for mediation, which were adopted for the orderly transaction of business, when the ends of justice require it. American Farm Lines v. Black Ball, Freight Service, 397 U.S. 532, 539; NLRB v. Monsanto Chemical Co., 205 F2d 763, 764. Mr. Quinn, the Executive Secretary of the NMB, unequivocally stated in his affidavit of March 26, 1979 that William Scheri did invoke the services of the NMB by telephone on February 22. Mr. Quinn had previously stated in the exchange of telexes with Murray Gartner on two occasions that Scheri had invoked NMB service in the telephone conversation and thereby activated the status quo provision of Section 6.

The District Court's finding that neither Mr. Scheri nor Mr. Quinn intended that the NMB services were invoked in the telephone conversation and that both

parties agreed the written application would be the request for services is at odds with the evidence.

The Court's reliance on the fact that the request for mediation was not docketed until February 23 as an indication that NMB services were not invoked until February 23 is a misunderstanding of NMB procedure. Mr. Quinn in his deposition explained that docketing of mediation requests vary and that unless an emergency is involved the docketing need not be on the day the request is received. In this case Mr. Quinn did not become aware of the emergency situation until February 23 at which time the matter was docketed. Mr. Quinn testified that the General Counsel's office to the NMB and the Staff Mediation Director were aware of the IAM request for NMB services on February 22, 1979.

Mr. Quinn promptly informed Murray Gartner, the attorney for Iberia Air Lines, on February 23 of the request by the IAM for NMB services in a telephone conversation. Iberia had knowledge of the IAM's intent to request NMB services from Mr. Schafer's conversation on February 10 with Mr. Cuenca and the February 13 IAM bulletin which Mr. Cuenca had seen. Despite such information, Iberia chose to implement the work changes. Iberia assumed the risk of taking a hard-nosed position and should be held accountable for its action. Iberia could have reverted to the Section 6 status quo conditions within hours of its changes as requested by the NMB but did not do so.

The scheme of the RLA is to keep the parties in long drawn out and interminable procedures. Detroit & Toledo Shore Line Ry. Co. v. United Transportation Union,

396 U.S. 142 (1969); Brotherhood of Railroad Trainment v. Jacksonville Terminal Co., 394 U.S. 142 (1969), By extending the ten day filing period to February 22, the intent of the RLA would be carried out because of the invocation of NMB services on that day. The NMB invocation of services by the IAM within the meaning of Section 6 would activate the status quo provisions of Section 6. The NMB mediator would then assist the parties in seeking to settle the contract demands as was intended by the RLA.

CONCLUSION

For the foregoing reasons, this petition should be granted and a writ of certiorari issue to review the

decision and judgment of the Court of Appeals for the Second Circuit.

Respectfully submitted,

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December 22, 1980

JUDGMENT OF THE SECOND CIRCUIT, COURT OF APPEALS

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of September one thousand nine hundred and eighty

Present:

HON. LEONARD P. MOORE

HON. WILLIAM H. MULLIGAN

HON. AMALYA L. KEARSE

Circuit Judges,

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

IBERIA AIR LINES OF SPAIN
PLAINTIFF-APPELLEE
V.
NATIONAL MEDIATION BOARD, INTERNATIONAL ASS'N OF MACHINISTS & AEROSPACE WORKERS AFL-CIO("IAM") and IAM DISTRICT LODGE NO. 100
DEFENDANTS
NATIONAL MEDIATION BOARD
DEFENDANT
INTERNATIONAL ASSOCIATION OF MACHINISTS & AERO SPACE WORKERS, AEO-CIO("IAM") and IMA DISTRICT LODGE NO. 100
DEFENDANT-APPELLANTS

79-7543

79 7543

UNITED STATES OF AMERICA
PLAINTIFF
V.
IBERIA AIR LINES OF SPAIN
DEFENDANT-APPELLEE

Appeal from the United States District Court for the District of

This cause came on to be heard on the transcript of record from the United States District Court for the District of , and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the Court's oral opinion in open court with costs to be taxed against the appellants.

A. DANIEL FUSARO
Clerk

By: Edward J. Guardaro
Edward J. Guardaro
Deputy Clerk

OPINION AND JUDGMENT OF
THE DISTRICT COURT

WARD, J.

Iberia Air Lines of Spain ("Iberia"), plaintiff and defendant in these two consolidated actions,[1] moves pursuant to Rule 56, Fed. R. Civ. P., for summary judgment declaring that, on February 23, 1979, it lawfully changed the rates of pay, rules, and working conditions of certain of its employees represented by the International Association of Machinists and Aerospace Workers ("IAM"). For the reasons hereinafter stated, Iberia's motion is granted.

The Facts

Iberia is an air carrier subject to the provisions of the Railway Labor Act ("RLA" or "Act"), 45 U.S.C. §§151-88. The IAM is the duly recognized representative of approximately 260 Iberia

employees in the United States and Puerto Rico.[2] Prior to January 1, 1976 Iberia and the IAM entered into a labor agreement ("the agreement"), effective January 1, 1976, covering the terms and conditions of employment of Iberia's IAM-represented employees. The agreement expired by its terms on December 31, 1978. On September 29, 1978, pursuant to Section 6 of the RLA,[3] Iberia and the IAM exchanged notices of intended changes in the agreement and began negotiating a new agreement. From November 6, 1978 through February 10, 1979, the parties conducted negotiating sessions. On February 10, 1979, the negotiations became deadlocked and were terminated.

Following the deadlock of negotiations, on February 10, 1979 and again

on February 13, 1979, Iberia informed its employees that in the absence of a request for mediation or further negotiation between the parties within the next ten days, i.e by February 20, Section 6 of the RLA gave the employees the right to strike and the carrier the right to make unilateral changes in the terms and conditions of employment. On February 13, 1979 IAM District 100 inaccurately notified its members that it had invoked the NMB's mediation services. What District 100 had actually done was to mail a letter to the IAM's international headquarters in Washington, D.C. requesting that the international union invoke the NMB's mediation services on the local's behalf.[4] The request arrived at the IAM's international's headquarters on Friday,

February 16, 1979.

The offices of the NMB were closed on Monday, February 19, 1979, in observance of Washington's Birthday, a federal holiday. Because of a snowstorm, the Board's offices were also closed on February 20, 1979, the last day for a request for or proffer of the Board's mediation services under Section 6 of the Act. On the next day, February 21, 1979, the NMB's offices reopened. The IAM's international offices, however, were closed on both February 20 and 21, 1979.

On February 21, 22 and at approximately 12:00 noon on February 23, 1979 Iberia representatives asked the Executive Secretary of the NMB, Rowland K. Quinn, Jr., whether any request for mediation had been received in connec-

tion with the Iberia-IAM dispute. Mr. Quinn informed the Iberia representatives on each occasion that no such request had been received. The Assistant Airline Coordinator of the IAM, William L. Scheri, however, had telephoned the Board on February 22, 1979 and stated that he was filing an application for the Board's mediation services in the Iberia-IAM dispute.

Since neither party had requested the mediation services of the NMB within ten days of the termination of conferences, Iberia announced at 11:00 A.M. on February 23, 1979 that it was placing into effect the rates of pay, rules and working conditions which it had proposed to the IAM during their unsuccessful negotiations. Later that day, Iberia

notified the NMB's Executive Secretary that it had placed the changes into effect.

Several hours after instituting these changes and notifying all the parties, Iberia was informed by the NMB that it had received an IAM request for mediation at 11:08 A.M. that morning and that the envelope containing the application had been sent the day before, on February 22, 1979. A subsequent letter from the NMB formally advised Iberia that the Board had received the IAM's application and that it had docketed the application as NMB Case No. A-10395. In spite of the fact that the NMB had not received the application within the statutory ten-day period set forth in Section 6 of the Act, the NMB's

docketing letter further advised that a mediator would be assigned to the dispute and "reminded (the parties) of the status quo provisions of the Railway Labor Act."

On February 27, 1979, Iberia advised the Board that it considered the IAM application for mediation as untimely and ineffective to require the restoration of the rates of pay and working conditions which were in effect prior to February 23, 1979. Iberia also advised the NMB that it did not regard the Board as having jurisdiction to mediate the dispute. The NMB responded on March 14, 1979 that it believed the case was properly docketed and that Iberia was obligated to restore the conditions which were in effect prior to February 23, 1979.

The NMB's mediator appeared at Iberia's offices on March 19, 1979 to begin mediation of the IAM-Iberia dispute. Refusing to meet with the mediator, Iberia's representatives restated the carrier's position that, while it remained willing to discuss incorporating the February 23 rules into an agreement with the IAM, it would decline to meet with the NMB mediator under conditions which would activate the status quo provisions of the Act.

On March 23, 1979 Iberia commenced the instant action for a declaratory judgment against the NMB and the IAM.[5] Later that day, the United States ("the government") commenced the related action for injunctive and declaratory relief against Iberia.[6] On April 2, 1979 by

order to show cause, Iberia moved, inter alia, for summary judgment. The government, on April 6, 1979, cross-moved pursuant to Rule 65, Fed. R. Civ. P., for a preliminary injunction directing Iberia to restore the pre-February 23, 1979 working conditions and to participate in mediation before the NMB. On April 18, 1979 the government withdrew its motion for a preliminary injunction.

The sole issue presented on Iberia's motion for summary judgment is one of statutory construction. The government contends that the Act should be interpreted to require that the status quo be maintained not only during the ten-day period expressly provided in Section 6, but during any subsequent period if the request for mediation is made after the expiration of the ten-day period, but

before a change in the status quo. Alternatively, the government contends that the ten-day statutory period was tolled for two days through February 22, 1979 because a snowstorm prevented the IAM from opening its Washington, D.C. offices on February 20 and 21, 1979. Iberia contends that Section 6 of the Act explicitly allows a carrier to change the rates, rules, and working conditions of its employees when ten days have elapsed after termination of conferences without request for or proffer of the NMB's mediation services.

Discussion

Section 2, Seventh of the Railway Labor Act, 45 U.S.C. §152, Seventh, states:

> No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Section 6 of the Act, 45 U.S.C. §156, in turn, expressly prohibits changes by the carrier:

> until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Section 6 of the Act, therefore, refers to Section 5[7] as the provision under which the NMB is to mediate a dispute "unless a period of ten days has elapsed after termination of conferences" without invocation of the Board's services.

Absent a request for or proffer of mediation within then ten-day period, the carrier is free under the terms of the Act to change the rates, rules, and working conditions of its employees.

In spite of the apparently unequivocal language of Section 2, Seventh and Section 6 of the Act, the government contends that the statute should be construed to require reinstitution of the status quo by the other, even after the expiration of the ten-day period. This construction of Section 6, the government urges, is the only one which advances the self-evident purpose of the Act to allow mediation and the Act's other procedures to play a significant role in the resolution of labor disputes prior to the parties' resort to economic

self-help. The Court finds no merit in the government's contention.

Although mediation by the NMB unquestionably occupies a central place in the elaborate scheme established by the Railway Labor Act for the resolution of disputes involving changes in rates of pay, rules or working conditions, see e.g., Chicago and North Western Railway Company v. United Transportation Union, 471 F.2d 366, 369 (7th Cir. 1972), the provisions of the Act itself clearly envisage two possible courses of action open to the parties to a dispute. The first involves the successive steps of conferences, compulsory mediation, and a 30-day cooling off period, with the additional possibility of an Emergency Board; the second involves conferences, followed by freedom of action of the

parties, if no request for mediation is made within ten days after the termination of conferences. By accepting the government's interpretation of the Act, that a request for mediation after the ten-day period can nevertheless activate the status quo requirement of Section 6, this Court would be writing out of the statute the very condition which excuses the carrier from its obligation not to alter conditions -- the lapse of ten days after the termination of conferences without invocation of the NMB's services. Such an interpretation would, moreover, frustrate the obvious purpose of the limited status quo provisions of Sections 5 and 6, the preservation of the ultimate right of the parties, implicit in the statutor scheme, to resort to economic self-help. See

Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378 (1969); Florida East Coast Ry. Co. v. Brotherhood of Railroad Trainmen, 336 F.2d 172, 181 (5th Cir. 1964), cert. denied, 379 U.S. 990 (1965).

Nor is the government's position buttressed by the NMB's interpretation of Section 6's status quo provisions or the NMB's action in docketing the Iberia-IAM dispute and assigning a mediator. As the Supreme Court stated in Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union, 396 U.S. 142, 158-59 (1969), the NMB has no authority to interpret Section 6 of the Act:

> [T]he Mediation Board has no adjudicatory authority with regard to major disputes, nor has it a mandate to issue regulations construing the Act generally. Certainly there is nothing in the Act which can be

> interpreted as giving the Mediation Board the power to change the plain, literal meaning of the statute, which would be the result were we to adopt its interpretation of §6.

See also Chicago & North Western Railway Co. v. United Transportation Union, 402 U.S. 570, 581 (1971).

Similarly without significance is the Board's docketing of the IAM's untimely application for mediation and assignment of a mediator. As the Court stated in Pan American World Airways, Inc. v. International Brotherhood of Teamsters, 275 F.Supp. 986, 995 (S.D.N.Y. 1967), aff'd per curiam on opinion below sub nom. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees v. Pan American World Airways, Inc., 404 F.2d 938 (2d Cir. 1969), in the context of declaring that a carrier would violate the Act if it negotiated a

new agreement with an incumbent union while a representation proceeding involving a rival union was pending before the NMB, despite the fact that the NMB had proffered mediation between the carrier and the incumbent union:

> [T]he proffer of the Board, presumably under §5, First, to mediate the immediate dispute between the Clerks Union and Pan Am, signalled by the Clerks strike call, does not furnish any bar to the granting of the declaratory relief sought. Assuming that the Board had the power under §5, First, to undertake mediation of a dispute of this character, the mediation proceedings are designed merely to bring the parties to an agreement. In such mediation the Board performs no such adjudicative function and is not called upon to, and indeed could not make a binding determination of the question of law at issue between the parties which is the core of the dispute.

The Court therefore rejects the government's invitation to construe the Act in clear derogation of its express statutory language.

The Court finds the government's[8] alternative contention equally unpersuasive. The essence of this argument is that the ten-day period set forth in Section 6 of the Act should be deemed tolled for two days through February 22, 1979 because the IAM was prevented by a snowstorm from opening its Washington offices on February 20 and 21. The government further argues that IAM's telephone request on February 22, 1979 should be deemed sufficient invocation of the NMB's services as of that date.

The undisputed facts clearly establish that the snowstorm on February 19 and 20, 1979 did not prevent the NMB from opening its offices on February 21, 1979. It is also clear that the IAM cannot credibly claim to have been unaware that

if it wanted effectively to invoke the NMB's mediation services it had to make the request within the ten-day statutory period ending February 20, 1979.[9] Nor can the IAM credibly claim that it was unaware that the ninth day of that ten-day period, February 19, was a federal holiday. Under these circumstances the Court finds no basis for tolling the statutory period beyond February 21, 1979.

Moreover, even if the statutory period were tolled through February 22 there is no support for the government's contention that the IAM's telephone call on February 22 constituted effective invocation of the NMB's services. Any argument that a telephone conversation with a subordinate union officer constitutes invocation of mediation is belied

by the NMB's own regulation which specifies that a request is to be made on Form NMB-2 in duplicate and that the form is to be signed by the "highest officer of the carrier" or by the "chief executive of the labor organization."[10]

Furthermore, even if a telephone conversation could constitute effective invocation of the NMB's mediation services, there is simply no factual support for the government's assertion that the IAM requested these services by telephone on February 22, 1979. The deposition and affidavit testimony of both parties to the conversation, Mr. Quinn of the NMB and Mr. Sheri of the IAM, establishes that neither party considered the call an effective invocation of the Board's services. Mr. Quinn stated that Mr. Sheri only advised him "that he was

mailing the application for mediation." Similarly, Mr. Sheri stated in his affdavit that he merely told Mr. Quinn that he was "filing the (a)pplication for (m)ediation (s)ervices." Both parties to the telephone conversation in which the government now contends the NMB's mediation services were invoked thus agree that the NMB was merely informed that a request for such services was being forwarded.

The deposition testimony of Mr. Quinn also establishes that he took no action on February 22 to docket a request for mediation in the Iberia-IAM dispute or to indicate that the NMB's services had been invoked.[11] Mr. Quinn testified that it was only after the IAM's written application was received in the NMB's offices on

February 23, 1979, that the Board members were informed and the matter docketed. In light of these undisputed facts, the Court rejects the government's contention that the NMB's services were duly invoked during Mr. Sheri's telephone call to Mr. Quinn on February 22, 1979 and concludes that the effective filing of the request for the Board's services occurred on February 23, 1979, beyond the ten-day period, even allowing for a two-day tolling because of the snowstorm.[12]

Accordingly, Iberia's motion for summary judgment declaring that it lawfully changed the rates of pay, rules and working conditions of its employees represented by the IAM on February 23, 1979, as permitted by Section 6 of the

Railway Labor Act, in the absence of a request for mediation within the statutory ten-day period, is granted.

Settle judgment on notice.

Dated: New York, New York
June 21, 1979

S/ Robert J. Ward
U.S.D.J.

FOOTNOTES

1 Iberia is the plaintiff in an action against the National Mediation Board ("NMB" or "Board"), the International Assoication of Machinists and Aerospace Workers, AFL-CIO ("IAM"), and IAM District Lodge No. 100 ("District 100" or "local"). Iberia Air Lines of Spain v. National Mediation Board, et al., 79 Civ. 1536 (S.D.N.Y., filed March 23, 1979). Iberia is the defendant in a related action brought by the United States. United States of America v. Iberia Air Lines of Spain, 79 Civ. 1570 (S.D.N.Y., filed March 23, 1979). On April 10, 1979, on the consent of the parties, the two actions were consolidated pursuant to Rule 42(a), Fed. R. Civ. P.

2 The IAM represents Iberia employees in the following classifications: Passenger Agent, Passenger Supervisor, Cargo Agent, Cargo Supervisor, Purchasing Clerk, Purchasing Supervisor, Operations Agent, Assistant Flight dispatcher, Reservations Agent, Reservations Supervisor, Ticket Agent, Ticket Supervisor, Administration Agent, Lead Administration Agent, Catering Agent, Lead Catering Agent, Tariff Agent, Lead Tariff Agent, Communications System Operator/Teletype, Lead Communications System Operator/Teletype, Mail Clerk/Storeman/Courier/Chauffeur, Lead Mail Clerk/Storeman/Courier/Chauffeur, Agent, Secretaries, Switchboard Operator/Receptionist, and Utility Man Airport.

3 Section 6 of the RLA, 45 U.S.C. §156, provides:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

4 Under the IAM's internal operating procedures only the international union has the authority to invoke mediation.

5 Iberia's complaint seeks (1) a declaration that the IAM's request for mediation made after the expiration of the statutory ten-day period was ineffective to invoke the NMB's jurisdiction under Section 5, First of the Act or to call into effect the status quo provisions of Section 6 and that Iberia lawfully changed the rates of pay, rules and working conditions for Iberia employees represented by the IAM on February 23, 1979 and (2) a direction that the NMB terminate its mediation of this dispute between Iberia and the IAM.

6 The government's complaint seeks (1) a declaratory judgment that Iberia violated the status quo provisions of the Act by changing on February 23, 1979 the rates of pay, rules and working conditions for its IAM-represented employees, and (2) an injunction against Iberia's "changing, not preserving or not maintaining" the working conditions prior to February 23, 1979.

7 Section 5, First of the RLA, 45 U.S.C. §155, First, provides:

> The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
>
> (a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration or an emergency board shall be created under section 160 of this title, no change shall be

made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

8 District 100 of the IAM joins the government in this contention. For the purposes of this opinion, the Court will refer to it simply as "the government's contention".

9 Indeed, the IAM's own pamphlet explaining the procedures of the Act to its employees, entitled "Eleven Procedural Steps to Agreement (Required by the Railway Labor Act, as amended)", states:

STEP III

(a) If the parties "deadlock" or "break-off" negotiations either party may elect during a ten (10) day status-quo period to engage the services of the National Mediation Board. Notification to engage the services of the Board must be made by either or both parties during the ten (10) day status-quo period in writing.
(b) If neither the Company nor the Union request the services of the National Mediation Board, the Board may and can intercede and force the parties into Mediation if it so desires.
(c) If neither the Company nor the Union, or the National Mediation Board request the services of the

Board, the parties are free of any legal restraint.

10 Section 1203.1 of the NMB's Rules and Regulations, 29 C.F.R. §1203.1 (1978), provides:

> Applications for the mediation services of the National Mediation Board under section 5, First, of the Railway Labor Act, may be made on printed forms N.M.B. 2, copies of which may be secured from the Board's Secretary. Such applications and all correspondence connected therewith should be submitted in duplicate. The application should show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, if any, date and copy of notice served by the invoking party to the other and date of final conference between the parties. Application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act, or by the chief executive of the labor organization, whichever party files the application. These applications, after preliminary investigation in the Board's officer (sic), are given docket number in series "A" and the cases are assigned for

mediation to Board members or to mediators on the Board's staff.

11 Q Did you do anything involving or affecting Iberia Air Lines after you received that telephone conversation?... on the 22nd.

A No, I did nothing involving Iberia Air Lines on that date after that telephone conversation.

Q You didn't, for example, docket a request for mediation on the 22nd?

A No.

Q You did not docket any cases involving Iberia Air Lines after that telephone conversation?

A On the 22nd, no, I didn't.

Q On the 22nd. All right. Did you notify anybody representing Iberia Air Lines about that telephone conversation on the 22nd?

A No, I did not.

Deposition of Rowland K. Quinn, Jr., April 12, 1979, pp. 9-10.

12 The government's additional contention that the mailing of the application on February 22 constituted effective

invocation of mediation must also be rejected. The general rule, followed in numerous cases under the National Labor Relations Act, is that written notice is effective when received, not when placed in the mail. N.L.R.B. v. Vapor Recovery Systems Company, 311 F.2d 782, 785 (9th Cir. 1962) (notice of intention to terminate existing agreement); Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO v. N.L.R.B., 459 F.2d 1143, 1154 & n. 21 (D.C. Cir. 1972) aff'd per curiam, 412 U.S. 84 (1973) (notice of resignation from union). See also N.L.R.B. v. Acme Wire Works, Inc., 582 F.2d 153, 157 (2d Cir. 1978) (notice of withdrawal from multi-employer bargaining unit). The Court finds no basis for the application of a different rule in the instant case.

GG,III:mkb
79-0947
6/29/79

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -x

IBERIA AIR LINES OF SPAIN,

Plaintiff,

-against-

NATIONAL MEDIATION BOARD, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM") and IAM DISTRICT LODGE NO. 100,

Defendants.

FINAL JUDGMENT

79 Civ. 1536 (RJW)

SEAL U.S.DISTRICT COURT, FILED JULY 11,1979 S.D.N.Y.

- - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

IBERIA AIR LINES OF SPAIN,

Defendant.

79 Civ. 1570 (RJW)

- - - - - - - - - - - - - - - - -x

These causes having come on to be heard on the motion of Iberia Air Lines of Spain ("Iberia"), plaintiff and defendant, respectively, in the above-entitled actions, for summary judgment

pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having read and considered the Complaint in Case No. 79 Civ. 1536 (RJW) filed by Iberia on March 23, 1979 and the Complaint in Case No. 79 Civ. 1570 (RJW) filed by United States of America on March 23, 1979; the motion by Iberia for Consolidation and Summary Judgment dated April 2, 1972, with supporting affidavits of Murray Gartner and Jose Aragones, both sworn to April 2, 1979, and the exhibits thereto, Defendant's Memorandum of Law in Support of Motions for Consolidation and Summary Judgment, dated April 2, 1979, and Defendant's Statement Pursuant to Rule 9(g) of the General Rules of this Court, dated April 2, 1979; the motion by the United States for a Preliminary Injunction, dated April 6, 1979, with supporting

affidavits of Rowland K. Quinn, Jr., sworn to March 26, 1979, Art Schafer, sworn to April 5, 1979, and William Scheri, sworn to April 2, 1979, and the exhibits thereto, Plaintiff's Memorandum in Support of Its Motion for Preliminary Injunction and in Opposition to Defendant's Motion for Summary Judgment, dated April 6, 1979, and the Statement of the United States pursuant to Rule 9(g), dated April 6, 1979, filed on behalf of plaintiff United States and defendant National Mediation Board; the Reply Affidavits of Jose Aragones, sworn to April 9, 1979 and of Rafael Cuenca, sworn to April 10, 1979, In Support of Motion for Summary Judgment and in Opposition to Motion for Preliminary Injunction; the Reply Memorandum of Iberia Air Lines of Spain, dated April 10, 1979; the Reply Memorandum of the

United States, dated April 11, 1979; the Affidavit of Linda Shaw, sworn to April 13, 1979; the depositions of Rowland K. Quinn, Jr. and William Scheri, both taken on April 12, 1979; the letter to the Court from Assistant United States Attorney Gaines Swathmey, III, dated April 17, 1979, withdrawing the United States' motion for a preliminary injunction; the Affirmation of Kevin P. Wuill dated April 27, 1979, and Affidavit of George J. Poulin, sworn to April 24, 1979, in Opposition to Motion for Summary Judgment and the exhibits thereto, and the Memorandum of Law in Opposition to Motion for Summary Judgment, dated April 27, 1979, filed on behalf of the IAM defendants; the Supplemental Affidavit of Jose Aragones, sworn to May 1, 1979, in

Support of Motion for Summary Judgment, and the exhibits thereto; and the Supplemental Memorandum of Iberia Air Lines in Support of Motion for Summary Judgment, dated May 4, 1979; the Court having ordered on April 10, 1979, on consent of the parties, that these actions be consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure; the Court having heard argument of counsel for all parties on April 13, 1979; and the Court having issued and filed its Opinion, dated June 21, 1979, finding that there is no genuine issue as to any material fact and that Iberia is entitled to judgment as a matter of law, it is now, therefore,

ORDERED, ADJUDGED, DECLARED AND DECREED, that Iberia lawfully changed the rates of pay, rules and working conditions

of its employees represented by the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"), on February 23, 1979; and it is further

ORDERED, ADJUDGED, DECLARED AND DECREED, that the IAM's request for mediation made after the expiration of the ten-day period provided in RLA Section 6, 45 U.S.C. § 156, was ineffective to call into operation the status quo provision of the RLA Section 6; and it is further

ORDERED, ADJUDGED, AND DECREED, that Iberia have judgment against United States of America dismissing the Complaint in Case No. 79 Civ. 1570 (RJW).

Dated: New York, New York
July 10, 1979

S/
U. S. D. J.

Judgment entered
7/12/79

LETTER DATED FEBRUARY 12, 1979

DISTRICT LODGE NO. 100
International Association of Machinists
and Aerospace Workers
First Airline District

ATLANTA OFFICE
4362 Thurmond Road
Forest Park, Georgia
30050
Phone: 363-2274
(Area Code 404)

MIAMI OFFICE
801 W.4th Street -
Room 202
Hialeah, Florida
33012
Phone: 821-4220
(Area Code 305)

NEW YORK OFFICE
8 Freer Street
Lynbrook, New York 11563
Phone: 593-4545 (Area Code 516)

February 12, 1979

Mr. William L. Scheri
Assistant Airline Coordinator
I.A.M.A.W.
Machinists Building
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

SUBJECT: Iberia - IAMAW
Negotations

Dear Sir and Brother:

Enclosed please find copies of the I.A.M.A.W. and Iberia Air Lines of Spain Section VI openers, as well as a copy of the Union's original contract proposals.

This is to advise your office that our association has met with the carrier for purposes of negotiating changes in wages, benefits and working conditions on fifteen (15) different occasions. The dates are as follows: September 29, 1978, January 8, 9, 15, 16, 17, 18, 29, 30, & 31, February 1, 2, 8, 9th and 10th, 1979.

As late as 1:00 a.m. in the morning of February 9th, 1979 I felt progress was being made. On Saturday, February 10th, 1979 at 12:15 p.m. I was advised by the carriers chief negotiator, Mr. Rafael Cuenca that he was deadlocking negotiations on behalf of Iberia Air Lines of Spain.

Those present representing the carrier were:

Mr. Rafael Cuenca
Director of Foreign Labor Relations
Iberia Air Lines of Spain
Capitan Haya #46
Madrid, Spain

Mr. Jose Aragones
Vice President & General Manager, USA
Iberia Air Lines of Spain
97-77 Queens Blvd.
Rego Park, New York 11374

Mr. Enrique Parra
Personnel Manager
Iberia Air Lines of Spain
97-77 Queens Blvd.
Rego Park, New York 11374

and three (3) other assistants.

Those present representing the association were:

Sister Anna Hernandez
Brother A. Fernandez
Brother M. Rivera
Brother F. Calderon
Sister A. Abascal
Sister J. Domenech
Sister N. Hartmann
Sister C. Essabba
Brother G. Lugrin

and the undersigned.

In view of the aforementioned, I would appreciate your assistance in applying for a mediator as soon as possible.

Thanking you for your usual cooperation, and it is with best wishes I remain

Fraternally yours,

S/ Art Schafer

Art Schafer
General Chairman
District #100

AS:ld
opeiu #128

Enclosures

cc: Mr. J. F. Peterpaul
Mr. T. Connolly
Mr. J. G. Cates

TELEX DATED FEBRUARY 23, 1979
FROM GARTNER TO QUINN

STAMP
FEB 23 3 57 PM '79

M*
NMB WSH

POLETFRE NYK

FEBRUARY 23, 1979

ROWLAND K. QUINN, JR.
EXECUTIVE SECRETARY
NMB
WSH

THIS WILL CONFIRM MY TELEPHONE CONVERSATION WITH YOU AT APPROXIMATELY 12:15 P.M. TODAY, IN WHICH I ADVISED YOU THAT IBERIA AIRLINES OF SPAIN, IN THE ABSENCE OF A TIMELY REQUEST BY THE IAM FOR THE SERVICES OF THE MEDIATION BOARD AFTER TERMINATION OF CONFERENCES ON FEBRUARY 10, 1979, HAS INSTITUTED CHANGES IN RATES OF PAY, RULES, AND WORK CONDITIONS FOR ITS EMPLOYEES PROPOSED AND NEGOTIATED WITH THE IAM. SINCE YOU HAD ADVISED ME ON FEBRUARY 21, 1979, AND MR. BRILL OF MY OFFICE ON FEBRUARY 22, 1979, AND ME AGAIN IN THE COURSE OF OUR TELEPHONE CONVERSATION, THAT THE BOARD HAD NOT RECEIVED ANY RE@UEST FOR ITS MEDIATION SERVICES IN CONNECTION WITH ANY CURRENT DISPUTE AFFECTING IBERIA AIRLINES EMPLOYEES, I REQUESTED THAT IN THE EVENT THAT ANY SUCH REQUEST WAS SUBSEQUENTLY RECEIVED, THE BOARD RETAIN ANY ENVELOPE IN WHICH IT CAME, AND ANY OTHER EVIDENCE OF THE

DATE OF DISPATCH, ALTHOUGH IN OUR OPINION UNDER THE STATUTE ANY SUCH REQUEST MUST HAVE BEEN RECEIVED BY THE BOARD WITHIN THE STATUTORY TEN DAY PERIOD TO BE EFFECTIVE UNDER SECTION 6. THANK YOU FOR INFORMING ME AT APPROXIMATELY 3 P.M. TODAY THAT THE BOARD HAS NOW RECEIVED FROM THE IAM A REQUEST FOR ITS SERVICES IN RESPECT OF A DISPUTE INVOLVING IBERIA EMPLOYEES IN AN ENVELOPE POSTMARKED YESTERDAY AND THAT YOU WILL RETAIN THE ENVELOPE.

MURRAY GARTNER
ATTORNEY FOR
IBERIA AIRLINES OF SPAIN
*
NMB WSH

POLETFRE NYK

LETTER DATED FEBRUARY 23, 1979
FROM QUINN TO GARTNER

NATIONAL MEDIATION BOARD
Washington, D.C. 20572

February 23, 1979
Case No. A-10395

Mr. Wenceslao Corral
General Manager-U.S.
Iberia (Airlines of Spain)
97-77 Queens Boulevard
Rego Park, NY 11374

Dear Mr. Corral:

The Board has received an application for mediation from the International Association of Machinists & Aerospace Workers, AFL-CIO covering a dispute between that organization and Iberia (Airlines of Spain) on the following subject:

"Proposed changes in wages, rules and working conditions:

This application has been docketed as our Case No. A-10395 and will hereafter be referred to by that number. A mediator will be assigned to mediate this dispute consistent with prior commitments.

The parties are reminded of the status quo provisions of the Railway Labor Act.

Sincerely,

S/ Rowland K. Quinn, Jr.

Rowland K. Quinn, Jr.
Executive Secretary

cc: Mr. W. W. Winpisinger
International President
International Association of
Machinists & Aerospace
Workers, AFL-CIO
1300 Connecticut Avenue, N.W.
Washington, DC

Mr. Murray Gartner
Poletti, Freidin, Prashker,
Feldman & Gartner
1185 Avenue of the Americas
New York, NY 10036

NMB-2 APPLICATION

NATIONAL MEDIATION BOARD
APPLICATION FOR MEDIATION SERVICES
(File this Application in Duplicate)

TO THE NATIONAL MEDIATION BOARD
Washington, D.C. 20572

A dispute has arisen between the parties shown below which has not been adjusted between them, and the services of the National Mediation Board under section 5, First, of the Railway Labor Act, are hereby invoked on the specific question set forth below. The approximate number of employees involved are 250.

THE SPECIFIC QUESTION IN DISPUTE

See attached.

PARTIES TO DISPUTE

International Association of Machinists and Aerospace Workers, AFL-CIO
Iberia Airlines of Spain

WORKING AGREEMENT

If an agreement governing rates of pay, rules, or working conditions is in effect, give name of parties thereto and date thereof. If there is no such agreement, so state December 31, 1978
Int'l. Ass'n. of Machinists and Aerospace Workers and Iberia Airlines of Spain

COMPLIANCE WITH RAILWAY LABOR ACT

1. If this dispute involves change in the above-mentioned agreement, attach copy of the 30-day notice served by party desiring change and insert date of notice here September 29, 1978

2. If this dispute involves the negotiation of a new or supplemental agreement, attach copy of request made by party desiring same and insert date of request here September 29, 1978

3. If there has been a refusal to confer, so state and give reason; otherwise, give date of last conference here January 10, 1979

Signed at Washington, D.C. this 22nd day of February, 1979

Name William W. Winpisinger /S
(Signature of Applicant)

Title International President

AFFIDAVIT OF GEORGE J. POULIN

U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Iberia Airlines of Spain	)	
	)	
v.	)	No. 79 CIV
National Mediation Board and International Association of Machinists District Lodge 100	)	1536 RJW
and		
United States of America	)	No. 79 CIV
	)	1570 RJW
v.	)	
Iberia Airlines of Spain	)	

AFFIDAVIT
OF GEORGE J. POULIN

I am the Resident Vice President of the International Association of Machinists and at all times material to this case, I have been the Resident Executive Officer in charge of the administrative affairs of the International and the Grand Lodge at its headquarters, located at 1300 Connecticut Avenue, N.W., Washington, D.C.

This affidavit is made in connection with the above-styled case, currently before the U. S. District Court for the Southern District of New York:

1. I do hereby swear and affirm that on the 21st day of February, 1979, because of a severe snowstorm in the Washington, D.C. area, all offices in administration of this union, including its headq-arters, were closed because of the existing weather conditions which, in my considered judgment, made it impossible for personnel to come to work and/or to travel from this office. Thus, no personnel, stenographic or administrative were available to conduct and perform the normal course of business of this association during that day, or on the 22nd of February.

Furthermore, the affiant saith not.

S/ George J. Poulin
George J. Poulin

Subscribed and sworn to

this 24th day of April, 1979.

S/ James H. Thomas, Jr.
Notary Public D.C.
My Commission Expires
January 1, 1984

SEAL

AFFIDAVIT OF ROWLAND K. QUINN, JR.

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Rowland K. Quinn, Jr., being duly sworn deposes and states:

I am the Executive Secretary of the National Mediation Board (NMB or Board) and as part of my official duties I have custody of the NMB's files and records. I am familiar with the Complaint filed by the United States of America in the United States District Court for the Southern District of New York, Civil No. 79-Civ.-1570 (RJW). In addition, I am familiar with NMB Case No. A-10395 involving Iberia Airlines of Spain (Carrier) and the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM). Upon review of these matters I find the

following:

1. On February 19, 1979, the NMB's offices were closed officially for the observation of George Washington's birthday, and on February 20, 1979, the NMB offices were closed officially due to a weather emergency declared by Office of Personnel Management.

2. On February 22, 1979, Mr. William L. Scheri, the Assistant Airline Coordinator of the IAM, invoked the mediatory services of the NMB by telephone on behalf of the IAM with respect to the pending dispute between the Carrier and the IAM regarding changes in rates of pay, rules and working conditions.

3. On February 23, 1979, at 11:08 A.M., EST., an "Application for Mediation Services" (Form NMB-2) dated and postmarked February 22, 1979, was received

from the IAM with respect to the pending dispute between the Carrier and the IAM. (Attachment 1 hereto).

4. In accordance with its practice, on February 23, 1979, the NMB docketed the IAM's February 23, 1979, "Application for Mediation Services" as NMB Case No. A-10395. The NMB's docketing letter dated February 23, 1979, (Attachment 2 hereto) informed the Carrier that the IAM application had been filed and reminded the IAM and the Carrier of the status quo provisions of the Railway Labor Act.

5. On February 23, 1979, at 12:15 P.M. EST., Mr. Murray Gartner, Counsel for the Carrier, telephoned me to say that the Carrier had instituted changes in rates of pay, rules and working conditions for employees of the Carrier represented by

the IAM. Later that day the NMB received a telegram dated February 23, 1979, from Mr.Gartner confirming such changes. (Attachment 3 hereto). This was the first time the Board was notified of such changes.

6. On February 27, 1979, the NMB received a telegram dated February 27, 1979, from Mr. Murray Gartner, Counsel for the Carrier, advising the Board that under the circumstances of the pending dispute between the Carrier and the IAM, the NMB had neither power to docket the IAM's application nor to appoint a mediator. (Attachment 4 hereto).

7. On March 14, 1979, the NMB issued a telegram to Mr. Murray Gartner as Counsel for the Carrier, advising that under the circumstances the case

properly was docketed and that the IAM and the Carrier are obligated to return to the conditions which were present when the services of the Board were invoked by the IAM. (Attachment 5 hereto).

8. On March 14, 1979, the NMB received a telegram dated March 14, 1979, from Mr. Murray Gartner, Counsel for the Carrier, stating that the NMB's March 14, 1979, telegram was in error regarding the dates of George Washington's birthday and the subsequent weather emergency. Said telegram further stated that the Carrier intended to continue in effect the changes in rates of pay, rules and working conditions which it had instituted on February 23, 1979. (Attachment 6 hereto).

9. On March 16, 1979, the NMB issued a telegram to the Carrier and Mr. Murray Gartner concurring that the Board's March 14, 1979, telegram had inadvertenly mistated the dates of the George Washington's birthday holiday and the snow emergency day. Said telegram further stated that despite the corrected dates and the Carrier's various assertions to the contrary, the Carrier was required to restore the status quo, the NMB's jurisdiction to docket the IAM's application and to mediate the dispute properly had been invoked and a mediator was assigned to the case. (Attachment 7 hereto).

10. On March 16, 1979, the NMB received a telegram dated March 16, 1979, from Mr. Edward Brill, Counsel for the Carrier, stating that the Carrier refused to participate in mediation pursuant to

Section 5, First of the Railway Labor Act. (Attachment 8 hereto).

11. On March 19, 1979, the NMB's mediator reported to the offices of the Carrier in order to commence mediation of the pending dispute between the Carrier and the IAM, docketed as NMB Case No. A-10395. The Carrier's representatives declined to meet with the mediator except on an informal basis with the intention that such informal meeting would not restore the status quo provisions of the Act. The Carrier's representatives additionally refused to resume negotiations with the IAM's representative under the status quo provisions of the Act. (Attachment 9 hereto).

12. On March 21, 1979, the NMB received a letter dated March 20, 1979, and an enclosure thereto (Attachment 10

hereto), from Mr. Murray Gartner, Counsel for the Carrier, which detailed the particular changes instituted by the Carrier on February 23, 1979, to the rates of pay, rules and working conditions applicable to employees represented by the IAM. (Attachment 11 hereto).

13. On March 23, 1979, the United States of America filed the Complaint in Civil No. 79-Civ.-1570 (RJW).

S/ Rowland K. Quinn, Jr.
Rowland K. Quinn, Jr.
Executive Secretary
National Mediation Board

Subscribed and sworn to
before me this 26th of
March, 1979.

S/ Mary Catherine Priui
Notary
My Commission Expires
May 14, 1979

AFFIDAVIT OF WILLIAM L. SCHERI

Being sworn and deposed, William L. Scheri states as follows:

1. That my name is William L. Scheri. I am employed by the International Association of Machinists and Aerospace Workers as Assistant Airline Coordinator and my office is at 1300 Connecticut Avenue, N.W., Washington, D.C. 20036.

2. That I am familiar with the lawsuit filed by Iberia Airlines of Spain against the National Mediation Board and the International Association of Machinists and Aerospace Workers and District Lodge 100, Civil Action No. 79-Civ.-1536 (R.J.W.) and the case of the United States of America v. Iberia Airlines of Spain, Civil No. 79-Civ-1570 (R.J.W.).

3. That as part of my duties as Assistant Airline Coordinator, I am responsbiel for filing Applications for Mediation Services on form NMB2 (rev'd. 7-1-41).

4. That the Application for Mediation Services for Iberia Airlines of Spain was filed by me on February 22, 1979.

5. That on February 22, 1979, I personally notified Rowland Quinn, Executive Secretary of the National Mediation Board, that I was filing the Application for Mediation Services on Iberia Airlines of Spain.

6. That Monday, February 19, was a legal holiday being the celebration date for George Washington's birthday and our office, as well as all Government offices,

was closed.

7. That a catastrophic snowstorm occurred in Washington, D.C. starting on February 19 and continuing through February 22. All Government offices were closed on February 19, being the date of the aforementioned holiday, and were also closed on February 20 due to the catastrophic snowstorm.

8. That my home is in Silver Spring, Maryland, which is approximately 15 miles from my office and it was impossible for me to reach my office due to the snowstorm, until February 22, at which time I immediat4ly notified Rowland Quinn, the Executive Secretary of the National Mediation Board, that I was filing an Application for Mediation Services on Iberia Airlines of Spain. Due to the

snowstorm, my office was closed on February 20 and 21.

9. That there was no way whatsoever that I could have filed the application prior to February 22 due to, first the holiday and second the catastrophic snowstorm, and the fact that I could not get to my office where all the material necessary for filing the application was available. February 22, 1979, was the earliest date the application could be filed due to the circumstances set forth above.

Sworn to by me to the best of my knowledge and belief on this second day of April, 1979.

_____
WILLIAM L. SCHERI

Sworn to before me a Notary Public in and for the District of Columbia this second day of April, 1979.

_____
Notary Public

No. 80-1288

IN THE

Supreme Court of the United States

October Term, 1980

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO ["IAM"], and IAM DISTRICT LODGE NO. 100,

Petitioners,

against

IBERIA AIR LINES OF SPAIN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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Statement of the Case

The facts are fully and accurately set forth in the decision of the district court (reproduced at pages 2a-32a of the Appendix to the Petition).

Reasons Why the Writ Should Not Be Granted

Petitioners have not even attempted to argue that this case presents any special or important reason for exercise of the Court's certiorari jurisdiction. None of the grounds for review set forth in Rule 17 is claimed to be present in this case. On the contrary, petitioners merely argue that the two courts below incorrectly determined (1) that the facts* did not justify equitable tolling of the ten-day period for requesting mediation by the National Mediation Board** for two days beyond the end of that period, *i.e.*, to February 22, 1979; and (2) that, even if the period should be so tolled, the Board's mediation services were not effectively invoked on that day. (Petition 19a-23a).

Petitioners do not, and could not, argue that the unique factual circumstances of this case are ever likely to arise again, or that this case presents any question of importance in the administration of the Railway Labor Act. The clearest indication that petitioners simply seek another hearing of their twice-rejected tolling argument is that their statement of the "Reasons for Granting the Writ" consists of nothing more than a near-verbatim repetition of their

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* Principally a snowstorm in Washington, D.C. on February 19-20, 1979, which did not prevent this Court or the National Mediation Board from operating normally on February 21.

** Section 6 of the Railway Labor Act, 45 U.S.C. §156, provides for such ten-day period. Petitioners do not raise here, and did not raise in the Court of Appeals, any question concerning the district court's construction of Section 6, in accordance with its plain meaning, as requiring that a request for mediation be made within ten days after termination of conferences in order to call into operation the status quo provisions of the Act. The National Mediation Board and the United States, both parties to the action in the district court, withdrew their appeals and thus acquiesced in the district court's clearly correct decision.

brief to the Court of Appeals. Respondent sees no reason why this Court, on a petition for certiorari, should be subjected to re-argument of the unique facts which the Court of Appeals, in agreement with the district court, held did not call for the tolling of the statutory period which petitioners urged.

In short, the petition presents no issue appropriate for consideration by this Court.

Conclusion

The petition for a writ of certiorari should be denied.

Dated: New York, New York
March 2, 1981

Respectfully submitted,

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